be given a fair opportunity to correct or contradict them. This appears in all the cases from the celebrated judgment of Lord Loreburn, L.C. in *Board of Education* v. *Rice* [3] down to the decision of their Lordships' Board in *Ceylon University* v. *Fernando* [4]. It follows, of course, that the judge or whoever has to adjudicate must not hear evidence or receive representations from one side behind the back of the other. The Court will not enquire whether the evidence or representations did work to his prejudice. Sufficient that they might do so. The Court will not go into the likelihood of prejudice. The risk of it is enough. No one who has lost a case will believe he has been fairly treated if the other side has had access to the Judge without his knowing. Instances which were cited to their Lordships were *Re Gregson* [5], *Rex* v. *Bodmin Justices* [6] and *Goold* v. *Evans* [7], to which might be added *Rex* v. *Architects Registration Tribunal* [8], and many others.

Applying these principles their Lordships are of opinion that Inspector Kanda was not in this case given a reasonable opportunity of being heard. They find themselves in agreement with the view expressed by Rigby J. in these words: "In my view, the furnishing of a copy of the Findings of the Board of Inquiry to the Adjudicating Officer appointed to hear the disciplinary charges, coupled with the fact that no such copy was furnished to the plaintiff, amounted to such a denial of natural justice as to entitle this Court to set aside those proceedings on this ground. It amounted, in my view, to a failure to afford the plaintiff a reasonable opportunity of being heard in answer to the charge preferred against him which resulted in his dismissal." The mistake of the police authorities was no doubt made entirely in good faith. It was quite proper to let the adjudicating officer have the statements of the witnesses. The Regulations show that it is necessary for him to have them. He will then read those out in the presence of the accused. But their Lordships do not think it was correct to let him have the Report of the Board of Inquiry unless the accused also had it so as to be able to correct or contradict the statements in it to his prejudice.

Since their Lordships have already reached the conclusion that the dismissal was void on the ground that the Commissioner of Police had no authority to effect it, it is unnecessary for their Lordships to consider whether the setting aside of the proceedings would result also in avoiding the dismissal or merely in rendering it wrongful. Their Lordships notice that, before Rigby J. it was suggested that the only remedy was by *certiorari*. But their Lordships agree with him that the remedy by declaration is available also. There was some question at one time as to the scope of the declaration but it was agreed before their Lordships that it should be limited to the date of the dismissal.

Their Lordships will therefore report to the Head of the Federation as their opinion that the appeal should be allowed, the order of the Court of Appeal should be set aside, and that it should be declared that the dismissal of the plaintiff from the Federation of Malaya Police Force purported to be effected by one W. L. R. Carbonnell, the Commissioner of Police of the Federation of Malaya, on the 7th day of July, 1958, was void, inoperative and of no effect. The respondents should pay the costs of the appellant before their Lordships' Board and in the Court of Appeal and in the High Court.

Appeal allowed.

Solicitors: *Summer & Co.; Wray, Smith & Co.*

MARIAPRAGASAM v. PUBLIC PROSECUTOR

[A. Cr. J. (Thomson C.J.) April 7, 1961]

[K.L. — Criminal Appeal No. 13 of 1961]

Criminal Law and Procedure — Delay in bringing proceedings — Where details of case are important for Magistrate to make up his mind — Delays relevant — Recollection of witnesses not fresh.

Where details of a case are more important than its apparently more important features, delays are very relevant to the merits of the case because the recollections of the witnesses could not have been very fresh.

CRIMINAL APPEAL.

M. Shanker for the appellant.

Tengku Rithaudeen (Deputy Public Prosecutor) for the respondent.

Thomson C.J. (delivering oral judgment): The first point in the present appeal is that the incident on which the prosecution arose occurred on 17th April, 1960; the summons was not issued until 29th June, 1960; and the case was not tried until 23rd December, 1960. There is no explanation to be found anywhere for these perfectly shocking delays.

These delays are very, very relevant to the merits of the case because it is very difficult to think that the recollections of the various witnesses could have been very fresh on the 23rd of December as to something that happened on 17th April. That was of particular importance in a case like this where the details of the occurrence were probably more important than its apparently more important features because it is on small points and some matters of detail that an experienced Magistrate can generally rely to come to some sort of a conclusion in a case of this sort.

It is quite clear, the only thing that is clear on the evidence, that the defendant is a very bad driver and has only himself to blame for all his suffering and misfortune.

That is clear, but beyond that it is by no means clear to my mind whether what occurred was due to a lack of care such as would justify conviction for an offence under section 36(1) or

whether it was due to a combination of inexperienced driving and lack of presence of mind in an emergency.

It is all very well to say there was a "road closed" sign just above the Lake Club and, whatever the defendant says and whatever his witnesses say, I accept that as true but the single road immediately above the Lake Club leads to a cross road from which five or six roads branch off and the notice at the Lake Club did not indicate which of these roads lying ahead was closed. In the circumstances it is reasonably possible that the defendant when he came to the actual cross road was taken by surprise. It is reasonably possible that being so bad a driver as he clearly is he found himself incapable of coping with the emergency with which he was then faced.

I think that was a reasonable possibility in the absence of any very definite direct evidence as to speed and I do think that at the very lowest the Magistrate should have taken it into account as causing a substantial doubt as to the correctness of the inference which he has in fact drawn of careless driving.

In all the circumstances of the case I allow the appeal and quash the conviction. The fine paid by the appellant must be refunded.

Appeal allowed.

TAN MENG SAN v. LIM KIM SWEE

[C.A. (Thomson C.J., Hill and Good JJ.A.) June 5, 1961]

[K.L. — F.M. Civil Appeal No. 6 of 1961]

Contract — Agreement to transfer land on satisfaction of certain debts — No transfer made after satisfaction — Whether contract was unfair — Whether there was unreasonable delay — When condition precedent must be fulfilled.

Specific Relief (Malay States) Ordinance, 1950, ss.21 and 27.

The appellant on August 30, 1958, agreed to the transfer of a certain piece of land to the respondent in consideration of the respondent settling the appellant's debt to C for $16,000 and paying the appellant's solicitor his professional fee of $5,000. The respondent subsequently paid off the appellant's debts to C and arranged with the said solicitor whereby the said solicitor no longer looked upon the appellant for payment of his said professional fee. The appellant despite these arrangements refused to transfer the said land to the respondent. It was contended for the appellant that (1) the contract was unfair, (2) there was no proof of fulfilment of the condition precedent, namely payment to C, (3) there was no proof that the respondent was able and willing to perform his part of the contract, (4) there was undue delay on the part of the respondent, and (5) in view of the principles in *Aberfoyle Plantations Ltd.* v. *Khaw Bian Cheng* (1) payment to C was a condition precedent.

Held: (1) the appellant had received in the fullest measure all that he bargained for and the Court should not exercise the powers under section 21 of the Specific Relief Ordinance, 1950, to vary the findings of the trial judge;

(2) in view of the evidence, the second ground must fail;

(3) the proof of the respondent's willingness to perform his part of the bargain lay in the fact that he paid C;

(4) in all the circumstances of the case the respondent was not guilty of unreasonable delay in seeking his remedy;

(5) as time was not the essence of the contract only the second principle in *Aberfoyle Plantations Ltd.* v. *Khaw Bian Cheng* (1), namely that the condition must be fulfilled within a reasonable time applied in this case.

Cases referred to:—

(1) *Aberfoyle Plantations Ltd.* v. *Khaw Bian Cheng* [1960] M.L.J. 47, P.C.

(2) *Hesse* v. *Briant* 43 E.R. 1375.

(3) *Ardeshire H. Mama* v. *Flora Sassoon* A.I.R. 1928 P.C. 208.

(4) *Jamshed Khodaram Irani* v. *Burjorji Dhunjibhai* A.I.R. 1915 P.C. 83.

(5) *Mills* v. *Haywood* 6 Ch. D. 196, 202-3.

COURT OF APPEAL.

A. L. Hills for the appellant.

D. G. Rawson for the respondent.

Cur. Adv. Vult.

Good J.A. (with whom **Thomson C.J.** and **Hill J.A.** concurred): This is an appeal from a judgment of Ong J. in an action in the High Court at Seremban in which the present respondent was granted a decree for specific performance of an agreement for the sale of land.

The facts of the case have been complicated and to some extent confused by the acts of the parties themselves. The question to be decided is simple enough: it is, whether the respondent has by his own act or omission debarred himself from obtaining a decree for specific performance; but before attempting to answer that question it is necessary to examine the history of the transaction in some detail.

The appellant is the executor and trustee of the will of his mother who died in 1935. The testatrix bequeathed the whole of her property to the appellant and one of his brothers, Tan Hai San, as trustees, with directions to them to sell the property and to hold the proceeds in trust, one-third for Tan Hai San, one-third for the appellant and the remaining one-third for the children of another brother. Probate was granted to the appellant in 1936.

The estate included the land comprised in Negri Sembilan Certificate of Title No. 4135 for Lot No. 1791 in the Mukim of Ampangan in the District of Seremban, and it is with this land that the present proceedings are concerned. The appellant is the registered proprietor of the land "as representative".

On 12th November, 1954, the appellant borrowed from one S. J. Coelho the sum of $20,000, repayable on 6th November, 1960. Interest at 15 per cent per annum was to be paid by the appellant on the 12th day of every month throughout the term of the loan, and if the interest fell into arrear for three months the principal and the arrears of interest were to become due and payable immediately. As security for